

HOUSE BILL REPORT

HB 1144

As Reported by House Committee On:
State Government Operations & Accountability

Title: An act relating to disclosure of and restrictions on campaign funding.

Brief Description: Making restrictions on campaign funding.

Sponsors: Representatives Haigh, Nixon, McDermott, Morrell and Schual-Berke; by request of Public Disclosure Commission.

Brief History:

Committee Activity:

State Government Operations & Accountability: 1/28/05, 2/11/05 [DPS].

Brief Summary of Substitute Bill

- Provides for disclosure of electioneering communications to the Public Disclosure Commission.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Miloscia and Sump.

Minority Report: Without recommendation. Signed by 1 member: Representative Schindler.

Staff: Marsha Reilly (786-7135).

Background:

Washington state campaign finance laws enacted in 1994 were partially invalidated by *Washington State Republican Party v. Washington State Public Disclosure Commission*. The court held that there may be no limitation on soft money and only broadcast advertisements explicitly naming the candidate or the candidate's opponent could be regulated.

Washington State Republican Party confirmed that contribution limitations and reporting requirements were constitutionally acceptable. However, limitations on contributions and expenditures made for the purpose of issue advocacy were not acceptable. The court

determined that advertisements, even those that directly reference a candidate for political office, may not be limited in any way unless those advertisements specifically instruct the voter to support or reject a candidate.

Issue advocacy does not oppose or support a candidate. It explains an issue which may be an issue in contention in a political campaign. These are not regulated or limited. However, when the issue ad exhorts the audience to the action of voting or not voting for a particular candidate, or attacks a candidate's character, it then becomes *express advocacy*. This causes the issue ad to revert to a political ad.

In 2003, the United States Supreme Court in *Federal Election Commission v. McConnell* upheld most of the Bipartisan Campaign Reform Act of 2002 (BCRA), commonly known as the McCain-Feingold law. Specifically, *McConnell* upheld the BCRA electioneering communication provisions. The Court held that issue ads broadcast during the 30-day and 60-day periods preceding federal primary and general elections are the "functional equivalent" of express advocacy.

Statute requires that independent expenditures of \$1,000 dollars or more for political advertising that are made within 21 days of an election must be reported to the Public Disclosure Commission (PDC) within 24 hours of or on the first working day after the date the political advertising was presented to the public. At a minimum, the report must include:

- the name and address of the person making the expenditure;
- the name and address of the person to whom the expenditure was made;
- a detailed description of the expenditure;
- the date the expenditure was made and the date the political advertising was first presented to the public;
- the amount of the expenditure; and
- the name of the candidate and office sought or the ballot proposition supported or opposed.

Summary of Substitute Bill:

Electioneering communication is defined as any broadcast, cable, or satellite television or radio transmission, postal service mailing, billboard, newspaper, or periodical that clearly identifies a candidate, is made within 60 days of an election, and has a fair market value of \$5,000 or more.

Electioneering communications must be reported electronically to the PDC within 24 hours of it being made public and must include:

- the name and address of the sponsor;
- the source of funds for the communication and whether it is made with general treasury funds or through special solicitations;
- the name and address of the person to whom an electioneering communication expenditure was made;
- a detailed description of each expenditure of more than \$100;

- the date the expenditure was made and the date the communication was first broadcast;
- the amount of the expenditure;
- the name of each candidate clearly identified in the communication as well as the office being sought and the amount attributable to each candidate; and
- any other information the commission may require or exempt by rule.

Electioneering communications made at the candidate's request are contributions and are subject to the contribution limitations. Unless exempted from contribution limits, all contributions accrue toward those limits.

Substitute Bill Compared to Original Bill:

The substitute bill requires that reporting of electioneering communications that clearly identify more than one candidate must include a delineation of expenditures attributable to each candidate. It also makes clear that reports of electioneering communication sponsored by a business, union, group, association or other organization and paid for from a special solicitation of its members rather than with general treasury funds include the names and addresses of persons who contributed in excess of \$250.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2006.

Testimony For: The PDC supports the bill. It allows voters to follow the money and requires that a type of political advertising that now is virtually untraceable be reported promptly and fully. This type of advertising is sometimes referred to as issue advocacy or electioneering communications. The bill also reaffirms that exempt funds political parties receive may only be spent for those nine purposes specifically set in statute. The state has a compelling interest in providing voters information about electioneering communications in candidate campaigns so that voters can be fully informed. Non-disclosure of financial information about advertising that masquerades as relating only to issues and not to candidate campaigns fosters voter distrust and at least the appearance of corruption.

Testimony Against: None.

Persons Testifying: Vicki Rippie, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: None.